

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 DENNIS MCCABE,

4 Plaintiff

Case No. 3:18-cv-00011-RCJ-CBC

ORDER

5 v.

6 NEVADA DEPARTMENT OF  
7 CORRECTIONS et al.,

8 Defendants

9  
10 This action is a counseled civil rights complaint filed under 42 U.S.C. § 1983 by a  
11 state prisoner. On November 28, 2018, this Court issued an order denying the application  
12 to proceed *in forma pauperis*, without prejudice, because the application was incomplete.  
13 (ECF No. 4 at 1-2). The Court ordered Plaintiff to file a fully complete application to  
14 proceed *in forma pauperis* or pay the full filing fee of \$400.00 within thirty days from the  
15 date of that order. (*Id.* at 2). The thirty-day period has now expired, and Plaintiff has not  
16 filed another application to proceed *in forma pauperis*, paid the full filing fee, or otherwise  
17 responded to the Court's order.

18 District courts have the inherent power to control their dockets and "[i]n the  
19 exercise of that power, they may impose sanctions including, where appropriate . . .  
20 dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831  
21 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure  
22 to prosecute an action, failure to obey a court order, or failure to comply with local rules.  
23 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance  
24 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal  
25 for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856  
26 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring  
27 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833  
28 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*

1 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and  
2 failure to comply with local rules).

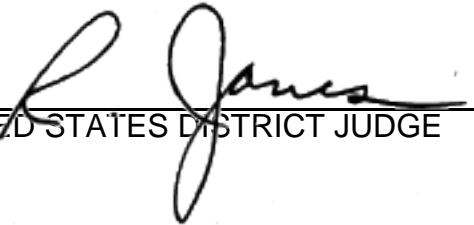
3 In determining whether to dismiss an action for lack of prosecution, failure to obey  
4 a court order, or failure to comply with local rules, the court must consider several factors:  
5 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
6 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
7 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
8 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;  
9 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

10 Here, the Court finds that the first two factors, the public's interest in expeditiously  
11 resolving this litigation and the Court's interest in managing the docket, weigh in favor of  
12 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of  
13 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
14 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*  
15 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy favoring  
16 disposition of cases on their merits – is greatly outweighed by the factors in favor of  
17 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
18 the court's order will result in dismissal satisfies the "consideration of alternatives"  
19 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779  
20 F.2d at 1424. The Court's order requiring Plaintiff to file another application to proceed  
21 *in forma pauperis* or pay the full filing fee within thirty days expressly stated: "IT IS  
22 FURTHER ORDERED that if Plaintiff does not timely comply with this order, dismissal of  
23 this action may result." (ECF No. 4 at 2). Thus, Plaintiff had adequate warning that  
24 dismissal would result from his noncompliance with the Court's order to file another  
25 application to proceed *in forma pauperis* or pay the full filing fee within thirty days.

26 It is therefore ordered that this action is dismissed without prejudice based on  
27 Plaintiff's failure to file another application to proceed *in forma pauperis* or pay the full  
28 filing fee in compliance with this Court's November 28, 2018, order.

1 It is further ordered that the Clerk of Court will close the case and enter judgment  
2 accordingly.

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4 Dated this 24<sup>th</sup> day of January, 2019.

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6   
UNITED STATES DISTRICT JUDGE  
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